



Crl.OP.Nos.17584 & 17907 of 2022 of 2022

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G.K.ILANTHIRAIYAN, J.

The petitioners, who were arrested and remanded to judicial custody on 05.03.2021 for the offences punishable under Sections 8(c), 20(b)(ii)(c) 25 and 29(1) of NDPS Act 1985 in Crime No.87 of 2021 on the file of the respondent police, seek bail.

2. There are totally 8 accused, in which the petitioners are arrayed as A6 & A5. The prosecution case is that petitioners along with other accused, were in possession of 76 Kgs of Ganja.

3. The learned counsel appearing for the petitioners pointed out that there was no recovery from the petitioners. Even as per the mahazar, the contraband was seized only from the other two accused. Further, he also pointed out that there is seizure mahazar contradiction in PW1 evidence. The samples were taken from the other accused persons and not from the petitioner. He further relied upon the judgment of the Hon'ble Delhi High Court *reported in 38(1989) DLT 204 Upender Singh Vs. State*. In which the Hon'ble Delhi High Court held that the sample parcel and the remaining parcel of the seized contraband were tampered with before they were deposited. He



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further submitted that when those contraband were seized, they were not seized from the petitioners and the prosecution failed to prove that the samples which were taken on the date of occurrence from the Auto and the samples produced were not tampered.

4. The said judgment is arising out of appeal as against the sentence. Therefore, the said judgment is not applicable to the present case. All the points raised by the petitioners shall be considered only by the trial court during the trial. Admittedly, according to the case of the prosecution, there are totally 8 accused, in which all the accused persons were in the possession of contraband totally weighing 76 Kgs. It is a commercial quantity. Therefore, this Court is not inclined to grant bail to the petitioners and these Criminal Original Petitions are dismissed. However, the trial Court shall complete the trial within a period of 3 months in C.C.No.204 of 2021 from the date of receipt of copy of this Order.

10.08.2022

mpl



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